IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

W.A.No.3867 of 2001

AGAINST THE JUDGEMENT IN O.P.NO.30873/2001-A DATED 5.11.2001.

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APPELLANTS/PETITIONERS IN O.P.:-

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1. SICY ABRAHAM, W/O.LATE ABRAHAM, KARIKKATTU PARAMBIL HOUSE, CHIVAKKADAVU EAST P.O., KANJIRAPPILLY.

2. VARKEYACHAN, S/O.LATE ABRAHAM, KARIKKATTU PARAMBIL HOUSE, CHIVAKKADAVU EAST P.O., KANJIRAPPILLY.

3. MINNA, S/O.LATE ABRAHAM, KARIKKATTU PARAMBIL HOUSE, CHIVAKKADAVU EAST P.O., KANJIRAPPILLY.

4. MINNY, S/O.LATE ABRAHAM, KARIKKATTU PARAMBIL HOUSE, CHIVAKKADAVU EAST P.O., KANJIRAPPILLY.

5. MAYA, S/O.LATE ABRAHAM, KARIKKATTU PARAMBIL HOUSE, CHIVAKKADAVU EAST P.O., KANJIRAPPILLY.

6. ACHU, S/O.LATE ABRAHAM, KARIKKATTU PARAMBIL HOUSE, CHIVAKKADAVU EAST P.O., KANJIRAPPILLY.

(APPELLANTS 3 TO 6 ARE MINORS & REPRESENTED BY THEIR MOTHER SICY ABRAHAM)

BY ADV. SRI.K.K.M.SHERIF
SRI.P.M.KUNJIMOIDEENKUTTY

RESPONDENTS/RESPONDENTS IN O.P.:-

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1. CO-OPERATIVE SOCIETIES APPELLATE TRIBUNAL, TRIVANDRUM.

2. CO-OPERATIVE JOINT REGISTRAR (GENERAL), KOTTAYAM.

3. THE KOTTAYAM DISTRICT CO-OPERATIVE BANK LTD., REP. BY ITS BRANCH MANAGER, KOTTAYAM.

4. ANSAMMA BABU, W/O.LATE BABU JOSEPH, VALLIPLAKKAL, CHIRAKADAVU VILLAGE, KANJIRAPPILLY.

5. ABILASH, S/O.LATE BABU JOSEPH, DO. DO.

6. MATHEW, S/O.LATE BABU JOSEPH, MINOR, REPRESENTED BY NEXT FRIEND & GUARDIAN ANSAMMA BABU, DO. DO.

7. JOSEPH, S/O.LATE BABU JOSEPH, REPRESENTED BY NEXT FRIEND & GUARDIAN ANSAMMA BABU, DO. DO.

R1 & R2 BY GOVERNMENT PLEADER SMT.A.G.ANEETHA.
R3 BY ADVOCATE SRI.T.R.HARIKUMAR.

BY ADV. SRI.M.M.MONAYE
SRI.M.PAUL VARGHESE

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

H.L.Dattu,C.J. & K.T.Sankaran,J.

W.A.No.3867 of 2001

Dated, this the 27th day of June, 2007

JUDGMENT

H.L.Dattu,C.J.

Petitioners in O.P.No.30873 of 2001 are the appellants in this Writ Appeal. They call in question the correctness or otherwise of the order passed by the learned Single Judge dated 5.11.2001.

2. The appellants before us are the wife and children of one late Abraham, who was the guarantor for the 4th respondent's husband. It is apropos to mention here that the husband of the 4th respondent was the principal borrower of certain moneys/funds from the 3rd respondent - the Kollam District Co-operative Bank Limited.

3. Since there was default in payment of the amounts borrowed, the 3rd respondent had raised a dispute before the Arbitrator as provided under the provisions of the Kerala Co-operative Societies Act. The Arbitrator has passed an award and in that has made the principal borrower and the guarantor as persons responsible jointly and severally for payment of the amounts awarded in the award.

4. Aggrieved by the said award, the appellants/petitioners have filed an appeal before the Kerala Co-operative Tribunal, Thiruvananthapuram. The said appeal was rejected by the Tribunal. For restoration of the appeal, an application was filed by the appellants. Even the said application came to be rejected by the Tribunal. Aggrieved by the said order passed by Tribunal, the appellants were before this Court in O.P.No.30873 of 2001. The learned Single Judge, taking a very sympathetic view of the matter and in exercise of the

extra ordinary and discretionary jurisdiction and in the ends of justice, has directed the Tribunal to restore the appeal filed by the appellants against the award passed by the Arbitrator, provided the appellants/petitioners deposit a sum of Rs.1,00,000/- within four weeks from the date of the order. Aggrieved by the conditional order so passed by the learned Single Judge, the petitioners are before us in this appeal.

5. The learned counsel appearing for the appellants vehemently contends before this Court that the learned Single Judge was not justified in imposing a condition for restoration of the appeal by the Tribunal. Therefore, requests us to interfere with the order passed by the learned Single Judge and then direct the Tribunal to restore the appeal without any conditions attached.

6. The learned counsel appearing for the respondent-Bank justifies the impugned order passed by the learned Single Judge.

7. Facts are not disputed. The Tribunal had rejected the appeal filed by the appellants. Thereafter, an application was filed for restoring the appeal. The said application is also rejected by the Tribunal. The appellants were before this Court making that as a grievance in the Original Petition. The learned Single Judge, in the ends of justice to both the parties and as a condition precedent for restoration of the appeal, has directed the appellants to make a deposit of Rs.1,00,000/- and if such a deposit is made, has directed the Tribunal to restore the appeal.

8. Having gone through the orders passed by the learned Single Judge, we are of the opinion that the order that is passed by the learned Single Judge is in the ends of justice to both the parties. The order so passed by the learned Single Judge cannot be termed as capricious, illegal or perverse. Therefore, interference with the impugned order does not call for in this appeal

and the same requires to be rejected and it is rejected.

9. After the rejection of the appeal, the learned counsel appearing for the appellants would submit that the appellants now will deposit a sum of Rs.1,00,000/- within eight weeks from today and further submits that if such deposit is made, a direction may be issued to the Tribunal to restore the appeal.

10. In our opinion, the request of the learned counsel appears to be fair and reasonable and if such a request is granted, no prejudice will be caused to the respondents. Therefore, the appellants are granted eight weeks' time from today to make a deposit of Rs.1,00,000/- (Rupees one lakh only) with the Tribunal and if such a deposit is made within the time granted by this Court, a direction is issued to the 1st respondent Tribunal to restore the appeal filed by the appellants and decide the same on merits.

Consequently, C.M.P.No.9218 of 2001 is dismissed.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-